



DELTA STEWARDSHIP COUNCIL

A California State Agency

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July 2, 2012

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The Honorable Joan Buchanan
California State Assembly
State Capitol, Room 2148
Sacramento, CA 95814

Members
Randy Fiorini
Gloria Gray
Patrick Johnston
Hank Nordhoff
Don Nottoli

AB 1095 (Buchanan): Delta Reform Act of 2009: covered actions

Executive Officer
P. Joseph Grindstaff

Dear Assembly Member Buchanan:

Thanks very much for talking with Joe Grindstaff and me this morning about AB 1095 and the Council's Draft Delta Plan (Plan). As you know, the Council is opposed to the current version of your legislation and we will make our position clear at tomorrow's hearing before the Senate Natural Resources and Water Committee.

After our meeting, we looked at the three development projects in San Joaquin County that you specifically mentioned and none appear impacted by the Plan. Let me answer your concerns directly.

As you know, the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1) was one bill of the five-bill water/Delta package adopted in 2009.

This legislation requires state and local agencies to be consistent with the Plan if they are proposing a 'covered action' (Water Code Sec. 85057.5). However, the act contains many exemptions, and excludes coverage for any secondary zone project "...for which a notice of approval or determination ...has been filed before the date on which the Delta Plan becomes effective" (Water Code Sec. 85057.5 (b) (7)).

Specific development projects of concern

- **Mountain House**

This project is the focus of your concern. It is unincorporated property located within San Joaquin County. The county approved the Mountain House Master EIR and at least one related development agreement in 1994, long before the Council was created. For this reason, development described in the project's master EIR would be exempt from the Delta Reform Act's definition of a covered action under Water Code Sec. 85057.5 (b)(7)(A). In addition, Section Water Code Sec. 85057.5 (c) prevents the Council from abrogating any vested rights that have been created by the development agreement approved for this project.

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

Moreover, because unincorporated land has no existing legal boundaries comparable to a county line or city limit, or sphere of influence, the Plan proposes to treat Mountain House as if it were comparable to a city. Thus, we utilized the precise boundaries for Mountain House adopted by San Joaquin County in its Mountain House Master Specific Plan Map. You will find the map of the master plan on page 3.8. Here is the link to the master plan:

<http://www.sigov.org/commdev/cgi-bin/cdyn.exe?grp=planning&htm=mhmasterplan>

The Plan specifically excludes property within city limits, property within a city's sphere of influence, and property within various 'legacy communities'. It also specifically excludes property identified in the *Mountain House General Plan Community Boundary*, as adopted by the San Joaquin Board of Supervisors, from several Plan policies affecting land use and development.

For example, ER P3, one of the Plan's 14 policies with regulatory effect, contains this language:

"This policy covers proposed actions other than habitat restorations in the priority habitat restoration areas depicted in Figure 4-4. *It does not cover actions outside those areas, including areas within cities and their spheres of influence (defined as of January 2012, the Contra Costa County Urban Limit Line, the Mountain House General Plan Community Boundary, or the Legacy Communities described in Chapter 5, including Bethel Island, Clarksburg (as described by the Clarksburg Growth Boundary), Courtland, Freeport, Hood, Isleton, Knightsen, Locke, Rio Vista, Ryde, and Walnut Grove.*" (Emphasis added)

- The **Sanctuary** development was also mentioned as one that has been halted by the Plan.

Sanctuary is apparently a 1,967 acre project on the west side of Stockton, within the Secondary Zone of the Delta, and within the Stockton city limits or sphere of influence. The city of Stockton approved Sanctuary, including its final environmental impact report and development agreement, in November 2008. As at Mountain House, development described in the EIR would be exempt from the definition of a covered action under Water Code Sec. 85057.5 (b) (7) (A). Also applicable is Section Water Code Sec. 85057.5 (c) which prevents the Council from abrogating any vested rights that have been created by the development agreement approved for this project.

- **River Islands**

River Islands is a well-known community development whose EIR and development agreement were approved by the County of San Joaquin in January 2003. As at Mountain House, development described in the EIR is exempt from the definition of a covered action under Water Code Sec. 85057.5 (b) (7) (A). Also applicable is Section Water Code Sec.

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85057.5 (c) which prevents the Council from abrogating any vested rights that have been created by the development agreement approved for this project.

November 2011 letters about potential covered actions

You suggested this morning that 10 letters sent to local agencies in 2011 have caused certain land development projects to 'lose financing.' No one has presented any information to the Council that this is a fact, but many fear it may be a result of adoption of the Delta Plan.

We have met many, many times with local elected officials, and even more frequently with staff from the five Delta counties. All have insisted that the Delta Plan be specific about what would be enforced. This led to the latest language about exclusion of development within city boundaries and specified unincorporated property. This was not enough for the local agencies, who insisted that we tell them precisely what we would decide in advance of deciding it.

Foolishly, we thought that providing some non-enforceable example of how the process might work would clarify things. So, our staff chose 10 examples where public notices requesting comments on local projects in the Delta were distributed by the Office of Planning and Research.

We sent the letters in October and November 2011. Seven of the letters sent stated it appeared that the cited project would not be a covered action. Three of the letters, including Mountain House, received a letter from Council staff stating, *"It appears that the project would likely meet the definition of a 'covered action', and would be subject to the Delta Plan, if the Delta Plan becomes effective prior to the filing of a notice of approval or determination for your project."*

Sanctuary and River Islands did not receive these letters. However, this exercise --- which had no regulatory effect --- became a cause célèbre for a couple of weeks. There was no legal effect to the letters, but some recipients were irritated when they learned they were sent.

We should not have sent the letters, although we would then have been criticized for not telling people how we intended to apply the law in the future. Since none of the three recipients of the letters have asked us to withdraw, edit, or rewrite the letters, we have not done so. However, if you want us to do that, we will be happy to do so.

Blanket exemptions for any local agency's plan for drinking water, wastewater treatment, storage or conveyance facilities relating to water quality

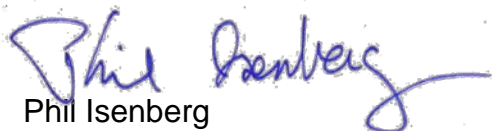
Finally, your legislation seeks a blanket exemption from the Delta Plan for "any upgrades to existing drinking water, storm water, or wastewater treatment, storage, or conveyance

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facility....” and any “flood control project.” We oppose these provisions for one simple reason: achieving the coequal goals of a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem, are not required elements of any other current state planning effort. The 2009 law made such coverage mandatory if a ‘covered action’ is involved.

Also, because the Council will not complete and adopt the Plan until late 2012, and because the regulatory portions of the Plan will not take effect until the state rulemaking process is completed (early 2013), any Council review of a covered action will not begin until then.

Sincerely,



Phil Isenberg
Chair



Randy Fiorini
Vice Chair